GHANI BIN JONIT v. REGINA (No. 2)

[C. C. A. (Tan Ah Tah Ag. C.J., Chua and Wee Chong Jin JJ.) November 24, 1958]

[Singapore — Criminal Appeal No. 28 of 1958]

Criminal Law and Procedure — Trial — Publication of articles in press prejudicial to fair trial of accused — Particulars which must inevitably have identified accused in the minds of jury — Court of Criminal Appeal Ordinance (Cap. 129), s.6(1) and (2).

Witness — Discretion of prosecution to call or not.

Trial — When jury should be discharged and trial adjourned to next assizes.

The appellant was convicted of murder and was sentenced to death. During the progress of the trial two articles appeared in two local newspapers giving four particulars which must inevitably have identified the appellant in the minds of any member of the jury who read the articles as being the person concerned in the offence. The four particulars are (a) the place; (b) the Avenue; (c) the month in which the alleged offence was committed; and (d) description of the occupation of the deceased. It was also stated that the source of information upon which the newspaper relied was a Senior Police Officer giving his name.

Held: a substantial miscarriage of justice occurred during the progress of the trial and as the evidence against the appellant was not overwhelming, the proviso to section 6(2) of the Court of Criminal Appeal Ordinance should be applied to order a new trial.

The prosecution has a discretion whether to call a particular witness or not. Where the appellant has not ascribed any improper motive to the prosecution in not calling the witness there is no failure on the part of the prosecution to present its case fairly.

COURT OF CRIMINAL APPEAL.

N. C. Goho for the appellant.

A. W. Ghows (Crown Counsel) for the respondent.

Tan Ah Tah Ag. C.J.: The appellant was convicted on the 22nd of August 1958 of the murder of one Tan Sian Bock and was sentenced to death. He now appeals from that conviction. One of the grounds of appeal relied on by counsel for the appellant is that the verdict of the jury was unreasonable or cannot be supported having regard to the evidence and in support of that ground of appeal counsel has addressed us on the discrepancies and contradictions in the evidence of the prosecution as well as the evidence relating to the lighting and visibility in the area of the ticket box. He has also referred to other pieces of evidence in the case such as the evidence relating to blood tests performed on the weapons that were found and on the objects that were found and also dealt with the evidence of Mansoor bin Fadzil. In our opinion the matters relied upon by counsel for the appellant on this ground of appeal were eminently fit for the jury to consider and we see no substance in this particular ground of appeal.

Another ground relied upon by counsel for the appellant was that the prosecution in not calling the material witness, Mansoor bin Fadzil, who gave evidence at the Preliminary Inquiry, failed to present its case fairly to the Court and Jury. Now, during the course of the trial this witness, Mansoor bin Fadzil, was offered by the prosecution to counsel for the defence to avail himself of the opportunity of calling this witness as a witness for the defence. The authorities show that the Prosecution has a discretion whether to call a particular witness or not. Counsel for the appellant has not ascribed any improper motive to the prosecution in not calling Mansoor bin Fadzil and in the circumstances and on the authorities we hold that there is no substance in the ground of appeal.

Another ground relied upon was that the learned trial Judge was wrong in law in admitting the evidence relating to the parang. It was urged by counsel for the appellant that the evidence was not relevant because the parang had not been found at the scene of the crime or was not proved to be connected with the commission of the offence in such a way as to indicate that it must have been the weapon with which the offence was committed.

In our opinion the evidence admitted by the learned trial Judge was relevant. He took great precaution in allowing that evidence to be given and we are of opinion that this ground of appeal fails.

Another ground relied upon by counsel for the appellant which he did not strongly press was that the learned trial Judge was wrong in law in not sufficiently directing the Jury that they must ignore the evidence relating to the parang as in any way connecting the appellant with the crime and that in not doing so, he misdirected the Jury. In our opinion the learned trial Judge when he said that it had not been proved that the parang was used in the commission of the offence was summing up in a way which was favourable to the appellant.

The final ground of appeal relied upon by counsel for the appellant is that by reason of the publication of two articles in the local press the trial of the accused (appellant) has been prejudiced. In other words that the publications appearing in the local newspapers has substantially affected the minds of the Jury and prejudiced the fair trial of the appellant. Two articles appeared in two local newspapers during the progress of the trial. We do not propose to read the articles because if we do so the attention of the members of the Jury who will eventually try the appellant during the retrial will be drawn to them and the fair trial of the appellant will in our opinion be prejudiced. It is sufficient to say that both these articles. which we have stated, were published while the trial was actually in progress. Four particulars were given which must inevitably have identified the appellant in the minds of any member of the Jury who read the articles as being the persons concerned in the offence. The four particulars are first, the place, secondly the Avenue, and thirdly the month in which the alleged offence was committed and fourthly there was also a description of the occupation of the deceased. It was also stated that the source of information upon which the

newspaper relied was a Senior Police Officer giving his name. Now counsel did not expressly apply for the discharge of the Jury. He drew the attention of the trial Judge to the publication of these articles and left it to the discretion of the learned trial Judge. In our opinion in view of the particulars contained in both articles any member of the Jury who had read the articles in question would inevitably have associated the appellant with the parties mentioned in the articles. There is no question that the articles tended to show that the persons concerned were persons of bad character. In our opinion if any member of the Jury had read the articles or one of them the result would have been highly prejudicial to the appellant. In our opinion the evidence against the appellant in this case cannot be properly described as being overwhelming. Counsel for the Crown has invited us to apply the proviso to section 6(1) of the Court of Criminal Appeal Ordinance, asking us to dismiss the appeal on the ground that no substantial miscarriage of justice has occurred. We are of the opinion that a substantial miscarriage of justice occurred during the progress of the trial and in view of the opinion which we have expressed that the evidence against the appellant in this case is not overwhelming we think that it is a fit case where the proviso to section 6(2) of the Court of Criminal Appeal Ordinance should be applied and we accordingly order a new trial to be held.

Before we conclude we would refer to the difficult position in which counsel for the appellant said that he found himself when these two articles appeared in the press. He said that if he had applied for the Jury to be discharged, the fresh Jury empanelled on the following day would have had almost the same opportunity of reading the articles in the newspapers as the Jury that was hearing the case. One solution of this difficulty is, in our opinion, to discharge the Jury and adjourn the case for trial at the next Assizes. A new trial is therefore ordered.

New trial ordered.

Solicitors: *S. C. Goho & Co.*

Re TEOH TEK SENG

[R. Cr. J. (Rigby J.) June 5, 1959]

[Alor Star — Kedah Criminal Revision No. 13 of 1959]

Road Traffic — Using motor vehicle for a purpose other than that for which it was licensed — Using motor vehicle when there was not in force in relation to its user a policy of insurance in respect of 3rd party risks — Mandatory disqualification — Discretion.

In this case the defendant was stopped on a public road when driving his private passenger vehicle. The vehicle was found to be loaded with 3.20 piculs of green bananas and 6 live ducks. The vehicle was licensed as a private passenger vehicle only and the certificate of insurance covering its use specifically did not cover use for the carriage of goods other than samples in connection with any trade or business. He pleaded guilty to two charges preferred against him of using his motor vehicle for a purpose other than that for which it was licensed, contrary to reg. 19(2) of the Motor Vehicles (Registration and Licensing) Regulations, 1954, and secondly, using the said motor vehicle when there was not in force in relation to its user a policy of insurance or such a security in respect of third party risks as complies with the requirements of these Regulations, contrary to reg. 3(2) of the Motor Vehicles Third Party Risks Regulations, and was fined on both charges.

Held: under reg. 3(2) of the Motor Vehicles Third Party Risks Regulations a conviction entails a compulsory order of a minimum period of 12 months' disqualification from holding or obtaining a driving licence, unless the Court for special reasons thinks fit to order otherwise. As the learned Magistrate overlooked this mandatory disqualification, the case must be remitted to him for him to give the defendant an opportunity, if he can, to advance any reasons which the Magistrate in his discretion may consider sufficient to justify him not imposing what would otherwise be the compulsory period of disqualification.

Cases referred to:—

(1) *Public Prosecutor* v. *M. Karthiah* [1953] M.L.J. 52.

(2) *Public Prosecutor* v. *Mohamed Jee* [1953] M.L.J. 54.

(3) *In re Antharanik Simon* [1954] M.L.J. 166.

REVISION IN JUDGE'S CHAMBERS.

Parties not present.

Rigby J.: This case has been referred to me by the learned Magistrate himself. The Defendant pleaded guilty to two charges preferred against him of using his motor vehicle for a purpose other than that for which it was licensed, contrary to Regulation 19(2) of the Motor Vehicles (Registration and Licensing) Regulations, 1954, and secondly, using the said motor vehicle when there was not in force in relation to its user a policy of insurance or such a security in respect of third party risks as complies with the requirements of these Regulations, contrary to Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations.

The brief facts of the case were that the Defendant was stopped on a public road when driving his private passenger vehicle. The vehicle was found to be loaded with 3.20 piculs of green bananas and 6 live ducks. The vehicle was licensed as a private passenger vehicle only and the certificate of insurance covering its use specifically did not cover use for the carriage of goods other than samples in connection with any trade or business. *Prima facie*, the vehicle was being used as a goods vehicle and not as a private passenger vehicle and therefore its use was not covered against third party risks by the policy of insurance held by the Defendant as its owner. The learned Magistrate fined the Defendant on both charges. However, under Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations a conviction entails a compulsory order of a minimum period of twelve months' disqualification from holding or obtaining a driving licence, *unless the Court for special reasons thinks fit to order otherwise.* The learned Magistrate